

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

GRISEL RAMONS, o/b/o E.B.,

Plaintiff,

Case No. 06-C-1179

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

ORDER DENYING MOTION FOR RELIEF UNDER FED.R.CIV.P. 60(b) and 59(e)

On October 6, 2008, this court issued a Decision and Order denying the plaintiff's motion for EAJA fees in the above entitled action. The plaintiff now seeks relief under Rules 60(b) and 59(e) Fed. R.Civ.P. on the ground that the court "inadvertently and mistakenly did not address the issue of the substantial justification for the litigation phase of the case." The Commissioner opposes the motion. The briefing on the plaintiff's motion is now complete.

In its decision, after resolving a procedural matter, the court addressed the merits of the plaintiff's motion, which turned on the issue of whether or not the Commissioner's litigation position was substantially justified. In discussing the merits, the Court concentrated on the decision of the ALJ and the reasons why the case was remanded on one, but not all, of the issues raised in plaintiff's appeal.

The plaintiff now contends that this court only addressed the ALJ's decision in denying the motion for EAJA fees, and thus ignored the agency's "litigation position," which, according to the plaintiff, consisted of much after-the-fact rationalization.

The court believes that the plaintiff is engaging in a myopic reading of its decision. Therefore, the court will make explicit what is implicitly, if not directly, stated in its decision. The Commissioner's litigation position was substantially justified.

The plaintiff's motion is **denied**.

SO ORDERED.

Dated at Milwaukee, Wisconsin, this 25th day of November, 2008.

s/AARON E. GOODSTEIN
U.S. MAGISTRATE JUDGE